

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DWIGHT D. CLARK, SR.,	§	
	§	No. 434, 2005
Claimant Below,	§	
Appellant,	§	Court Below: Superior Court of the
	§	State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	C.A. No. 04A-10-004
	§	
Employer Below,	§	
Appellee.	§	

Submitted: December 12, 2005

Decided: February 24, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**ORDER**

This 24<sup>th</sup> day of February 2006, upon consideration of the briefs of the parties and their contentions at oral argument, it appears to the Court that:

(1) Claimant-Appellant, Dwight D. Clark, Sr. (“Claimant”) appeals the Superior Court’s affirming of the Industrial Accident Board’s (“IAB” or “Board”) decision denying him worker’s compensation benefits arising from a traffic accident involving another vehicle and the DART<sup>1</sup> bus he was driving. He is seeking compensation for a closed period of total disability, an open period of partial disability benefits, medical expenses, and an attorney’s fee. Claimant

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<sup>1</sup> Delaware Administration for Regional Transit.

challenges the Board's admission of a digital video of the accident from the DART bus on two grounds: (1) the video was irrelevant because he is not shown in it; and (2) the admission of the video into evidence violates this Court's holding in *Davis v. Maute*. We find no merit to either of these arguments and affirm.

(2) On February 12, 2004, Claimant was the driver of a DART bus and stopped to pick up passengers. While the bus was stopped, the side mirror of a school bus struck the bus at the rear of the bus on the driver's side. Claimant testified that he felt a "slight jerk." Claimant affirmatively responded during his testimony to his attorney's characterization that "you quickly turned your head and your torso to the left." He testified that he felt a twinge in his back. As he waited for DART personnel to arrive, he said his neck, shoulders and back began to get stiff. He was taken to Wilmington Hospital where he was given a muscle relaxer and a pain reliever and told to go home. Because of continuing low back pain, he was referred to Bruce Katz, M.D., an orthopedic surgeon. Dr. Katz treated Claimant and also referred him to another physician who administered a nerve block to help control his pain. Claimant missed two weeks of work and returned on a part-time basis on April 1, 2004. He was released to Dr. Katz to work without restriction on April 15, 2004.

(3) Claimant filed a petition for workers' compensation benefits for periods of total and partial disability, as well as medical expenses. In preparation

for the hearing, Employer had Claimant examined by John Parkerson, M.D., who specializes in occupational medicine. At the hearing before the Board, testimony was presented by Claimant, his wife, a DART employee, Dr. Katz and Dr. Parkerson. The State introduced digital video taken by cameras inside the DART bus before, during and after the accident. The video did not show the driver but showed various interior views of the bus and some of its occupants. During their depositions, both doctors had also viewed the digital video.

(4) Dr. Katz testified that radiographic examination showed grade two spondylololthesis at L5-S1, which was unrelated to the accident. He further testified that the back injury could have been pre-existing spondylololthesis made symptomatic by the accident. Dr. Katz believed that Claimant needed to stay out of work because he thought vibration from the bus would aggravate his condition. Dr. Katz has an undergraduate degree in mechanical engineering with a sub-specialization in biomechanical engineering and worked as an engineer for three years. Although he was asked to review the digital video, he was not asked to provide any biomechanical engineering opinions.

(5) Dr. Parkerson, the Employer's medical expert and occupational medicine specialist, opined that the collision did not cause Claimant's back injury because there were no objective findings of injury. Dr. Parkerson believed Claimant was exaggerating his symptoms.

(6) The Board found that the digital video contradicted Claimant's description of the accident. The Board concluded that Claimant did not meet his burden of proving that he was involved in a compensable industrial accident and denied his petition for benefits.

(7) On appeal, Claimant claims that the Board erred by admitting the digital video into evidence. We review the Board's factual findings to determine whether they are supported by substantial evidence.<sup>2</sup> Where substantial evidence supports the administrative decision, this Court must affirm the ruling unless it identifies an abuse of discretion or a clear error of law.<sup>3</sup> We review the Board's admission of evidence for an abuse of discretion.<sup>4</sup>

(8) Turning to Claimant's first claim, the fact that he does not appear in the video does not make it irrelevant. Delaware Rule of Evidence 401 states "[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable

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<sup>2</sup> *A. Mazzatti & Sons, Inc. v. Ruffin*, 437 A.2d 1120 (Del. 1981). "If such evidence exists and the Board's decision is free from legal error, the Superior Court's decision must be affirmed. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. A reviewing court is not free to substitute its own judgment for that of the Board, even if it would reach a different conclusion based upon the facts presented. Moreover, it is the exclusive function of the Board to evaluate the credibility of witnesses." *Anderson v. GMC*, 748 A.2d 406 (Del. 2000).

<sup>3</sup> *DiGiacomo v. Bd. of Public Educ.*, 507 A.2d 542, 546 (Del. 1986).

<sup>4</sup> *See Bolden v. Kraft Foods*, Del. Supr., No. 363, 2005 (Dec. 21, 2005) (citing *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988)) ("An administrative board abuses its discretion in admitting or excluding evidence where its decision exceeds the bounds of reason given the circumstances, or where rules of law or practice have been ignored so as to produce injustice.").

or less probable than it would be without the evidence.” A depiction of the bus at the time of the accident was relevant within the meaning of D.R.E. 401.

(9) Claimant’s second claim is that the evidence must be excluded on the grounds of prejudice, confusion or waste of time given this Court’s holding in *Davis v. Maute*:

As a general rule, a party in a personal injury case may not directly argue that the seriousness of personal injuries from a car accident correlates to the extent of the damage to the cars, unless the party can produce competent expert testimony on the issue. Absent such expert testimony, any inference by the jury that minimal damage to the plaintiff’s car translates into minimal personal injuries to the plaintiff would necessarily amount to unguided speculation.<sup>5</sup>

With regard to photographs of vehicles involved in an accident, this Court stated in *Eskin v. Carden*<sup>6</sup> that “*Davis* should be limited to its facts, recognizing that there may be many helpful purposes for admitting photographs of the vehicles involved in an accident where the case does not require supporting expert opinion.”<sup>7</sup>

(10) In this case, the video was admissible to rebut Claimant’s testimony about a jerking sensation and to show that an industrial accident did not occur. We find that the Board did not abuse its discretion when it admitted the video into evidence. Because the decision of the Board is supported by substantial evidence and free of legal error, it must be affirmed.

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<sup>5</sup> *Davis v. Maute*, 770 A.2d 36, 400 (Del. 2001).

<sup>6</sup> 842 A.2d 1222 (Del. 2004).

<sup>7</sup> *Id.* At 1223.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice